YEAR

1997

Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities and Modified Endowment Contracts

CALIFORNIA FORM

3805P

For calendar year 1997, or fiscal year beginning , 9 7 , ending , 9 8 .

First name	Initial	Last name	Your social security number
Present home address (number and street or rural route)			Check this box if this is an amended return ☐
City, town or post office		State	ZIP Code

1 Early distributions included in gross income. See instructions . . . . . . **1** ______

2 Distributions excepted from additional tax. See instructions. Enter exception number from the instructions. ☐ . . . . . . **2** ______

3 Amount subject to additional tax. Subtract line 2 from line 1 . . . . . . **3** ______

4 Tax due. Multiply line 3 by 2½% (.025). Enter here and on Form 540, line 36 or Form 540NR, line 45. If you are not required to file a California income tax return, sign this form below and refer to the instructions . . . . . . **4** ______

Caution: If any amount on line 3 was a distribution from a SIMPLE retirement plan, you must multiply that distribution by 6% (.06) instead of 2½%. See instructions for more information.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. It is unlawful to forge a spouse's signature.

Your signature	Spouse's signature (if filing joint, both must sign)	Date
X	X	
Signature of paid preparer *(declaration of preparer is based on all information of which preparer has any knowledge.)*		Preparer's SSN/FEIN
Firm's name (or yours if self-employed) and address		Date

For Privacy Act Notice, see form FTB 1131.

General Information

Due to California legislation enacted in 1997, California tax law conforms to the Internal Revenue Code (IRC) as of January 1, 1997, and to selected provisions of the federal Taxpayer Relief Act of 1997 (Public Law 105-34).

Purpose

Use this form to report any additional tax you may owe on the early distribution from a qualified retirement plan, an annuity or a modified endowment contract.

Who Must File

You **must** file form FTB 3805P if you:

- Have distribution code 1 shown in box 7 of Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.;
- Owe the tax on early distributions from your qualified retirement plan (including IRA), annuity or modified endowment contract and you incorrectly have an exception code in box 7 of Form 1099-R; or
- Meet an exception to the tax on early distributions and the exception (distribution code 2, 3 or 4) is **NOT** shown or is incorrect on Form 1099-R. (You must file even if you do not owe any tax.)

You **do not** have to file form FTB 3805P if:

- You rolled over the entire taxable portion of the distributions you received during the year into another qualified plan within 60 days of receipt; or
- You received an early distribution from your plan but meet an exception to the tax (distribution code 2, 3 or 4 must be correctly shown on federal Form 1099-R).

California and federal laws are the same for tax on early distributions except for the rate of tax assessed. However, the amount of an IRA or Keogh distribution included in income may differ for state and federal tax purposes. Also, California does not have taxes similar to the excess contributions tax for IRAs, tax on excess contributions to medical savings accounts, or tax on excess accumulations in IRA plans.

Such taxes are figured on federal Form 5329, Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities and Modified Endowment Contracts, Part II, Part III and Part IV, respectively.

Joint Returns. Each spouse must complete a separate form FTB 3805P for taxes attributable to his or her distribution from a qualified retirement plan as described above. If both spouses owe a tax on early distributions, enter the combined tax from both forms on Form 540, line 36 or Form 540NR, line 45.

IRA Contributions. Do not file form FTB 3805P to report a deduction for contributions to your IRA or Keogh plan. See the instructions for Schedule CA (540), California Adjustments — Residents, or Schedule CA (540NR), California Adjustments — Nonresidents or Part-Year Residents.

If you made a nondeductible IRA or Keogh contribution in prior years, refer to FTB Pub. 1005, Pension and Annuity Guidelines, for information on how to compute the taxable portion of your IRA distribution subject to the additional tax.

When to File

If you are required to file a 1997 Form 540, California Resident Income Tax Return, or Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, you must attach your 1997 form FTB 3805P to your return.

If you do not have enough income to require you to file a Form 540 or Form 540NR, file only form FTB 3805P. File the form at the time you would be required to file Form 540 or Form 540NR.

If you are paying tax for a previous year, you must complete that tax year's version of form FTB 3805P. If you have filed your Form 540 or Form 540NR for the prior year and you have no adjustments to income that require you to file Form 540X, Amended Individual Income Tax Return, file only form FTB 3805P.

If you are filing form FTB 3805P separately from Form 540, Form 540NR or Form 540X, you must sign the form. Include a check or money order payable to the ''Franchise Tax Board'' for the tax shown on line 4 of form FTB 3805P. Include your social security number on your check or money order.

See the instructions for line 4 for information about where to file form FTB 3805P.

Definitions

Qualified Retirement Plan. A qualified retirement plan includes:

- A qualified pension, profit-sharing and stock bonus plan (including a Keogh plan and a qualified cash or deferred arrangement (CODA) under IRC Section 401(k));
- A qualified annuity plan;
- A tax-sheltered annuity; or
- An individual retirement account or an individual retirement annuity (IRA).

SIMPLE Retirement Plans. A SIMPLE retirement plan is a written arrangement established under IRC Section 408(p) that provides a simplified tax-favored treatment plan for small employers. A SIMPLE retirement plan can be an individual retirement account or an individual retirement annuity. Therefore, a SIMPLE retirement plan is a qualified retirement plan as defined above. As such, any mention of qualified retirement plans, individual retirement accounts, IRAs, or individual retirement annuities in these instructions includes SIMPLE retirement plans.

Early Distributions. Generally, any distribution from your qualified retirement plan, annuity or modified endowment contract that you receive before you reach age 59½ is an early distribution. The portion of the early distribution that is included in income is subject to an additional 2½% tax. (If the early distribution is from a SIMPLE retirement plan, the portion included in income is subject to an additional 6% tax.)

Prohibited Transactions. If you engaged in a prohibited transaction, such as **borrowing** from your individual retirement **account** or **annuity**, or pledging your individual retirement **annuity** as security for a loan, your account or annuity no longer qualified as an IRA on the first day of the tax year in which you did the borrowing or pledging. You are considered to have received a distribution of the entire value of your account or annuity at that time. Using your IRA as a basis for obtaining a benefit is also a prohibited transaction.

Pledging of Account. If, during your taxable year, you use any part of your IRA as security for a loan, that part is treated as being distributed to you.

If, during your taxable year, you use all or any part of your individual retirement annuity contract as security for a loan, the total value of that contract is treated as being distributed to you as of the first day of your taxable year.

Collectibles. If your IRA trustee invested your funds in collectibles, you are considered to have received a distribution equal to the cost of any ''collectible.'' Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages and certain other tangible personal property.

Rollover. A rollover is a tax-free distribution (withdrawal) of assets from one qualified retirement plan that is reinvested in another plan. Generally, you must complete the rollover within 60 days following the distribution for it to qualify for tax-free treatment. Refer to IRS Publication 590, Individual Retirement Arrangements (IRAs), for details.

Tax on Early Distributions. The tax on early distributions from qualified retirement plans does not apply to:

- 1997 IRA contributions withdrawn during the year or 1996 excess contributions withdrawn in 1997 before the filing date (including extensions) of your 1996 income tax return;
- Excess IRA contributions for years before 1996 that were withdrawn in 1997, and 1996 excess contributions withdrawn after the due date (including extensions) of your 1996 income tax return, if no deduction was allowed for the excess contributions, and the total IRA contributions for the tax year for which the excess contributions were made were not more than $2,250 (or if the total contributions for the year included employer contributions to a SEP, $2,250 increased by the smaller amount of the employer contributions to the SEP or $30,000);
- The part of your IRA distributions that represents a return of nondeductible IRA contributions figured on federal Form 8606;
- Distributions rolled over to another retirement arrangement or plan;
- A distribution of excess contributions from a qualified cash or deferred arrangement;
- A distribution of excess aggregate contributions to meet nondiscrimination requirements for employer matching and employee contributions;
- A distribution of excess deferrals; and
- Amounts distributed from unfunded deferred compensation plans of tax-exempt or state and local government employers.

See the instructions for line 2 for other distributions that are excepted from the tax.

Specific Line Instructions

Line 1 – Early Distributions Included in Gross Income

Qualified Retirement Plans (including IRAs). Enter the amount of distributions included in gross income you received from a qualified retirement plan, including your IRAs (and income earned on excess contributions to your IRAs), before you reached age 59½. The amount of the early distributions you must include in gross income for California purposes may differ from the amount reported on your federal return if the amount of contributions you deducted for California was different than the federal amount. You must report the difference on Schedule CA (540) or Schedule CA (540NR).

For Form 540NR filers, the amount entered on line 1 is the taxable amount of early distributions reported on Schedule CA (540NR), line 15, column E, IRA distribution or Schedule CA (540NR), line 16, column E, Pensions and Annuities.

Annuity contracts. If you receive any amounts under an annuity contract from distributions made before reaching age 59½, such amounts may also be subject to an additional 2½% tax on the portion which is includible in gross income. Refer to IRC Section 72(q) and IRS Publication 575, Pension and Annuity Income, for details. Enter on line 1 the distribution included in gross income.

Modified endowment contracts. In general, if you received any amounts under a modified endowment contract (as defined in IRC Section 7702A), entered into after June 20, 1988, from distributions before reaching age 59½, such amounts are also subject to an additional 2½% tax on the part of the distribution that is includible in gross income. Enter on line 1 the distribution included in gross income.

Prohibited transaction. If you engaged in a prohibited transaction, you are considered to have received a distribution of the entire value of your account or annuity as of the first day of the taxable year in which any transactions take place. If you were under age 59½ on the first day of the taxable year, enter on line 1 the distribution included in gross income.

Cost of collectibles. The cost of any collectible in which you invested funds of your IRA in 1997 is deemed to be a distribution to you in 1997. If you were under age 59½ when the funds were invested, enter on line 1 the cost of the collectible included in gross income.
Exception. Your IRA trustee may invest your IRA funds in U.S. one, one-half, one-quarter and one-tenth ounce gold coins and one ounce silver coins minted after September 30, 1986.

Line 2 – Distributions Excepted From Tax

The additional tax does not apply to certain distributions specifically excepted by the IRC. Enter on line 2 the amount that can be excluded. In the box on line 2, enter the number (01 through 08) of the applicable exception listed below.

No.	Exception
01	Distribution due to separation from service in or after the year of reaching 55 (applies only to qualified employee plans).
02	Distribution made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from a qualified employee plan, payments must begin after separation from service).
03	Distribution due to total and permanent disability. To meet this exception, you must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. See IRS Publication 590. If you do not owe tax on your early distribution because of this exception, and the Form 1099-R that you received shows distribution code 3, you do not have to file form FTB 3805P unless otherwise required.
04	Distributions due to death (does not apply to modified endowment contracts). If you do not owe tax on your early distribution because of this exception, and the Form 1099-R that you received shows distribution code 4, you do not have to file form FTB 3805P unless otherwise required to do so.
05	Distribution to the extent you have medical expenses deductible under IRS Section 213.
06	Distributions made to an alternate payee under a qualified domestic relations order (applies only to qualified employee plans).
07	Distributions made to unemployed individuals for health insurance premiums.
08	Other (see instructions below).

Note: Exceptions 01 and 06 above DO NOT apply to distributions from IRAs or annuity or modified endowment contracts. They apply only to distributions from qualified employee plans.

Other exceptions. In addition to exceptions listed, the tax does not apply to any distributions from a plan maintained by an employer if:

- You separated from service by March 1, 1986;
- As of March 1, 1986, your entire interest was in pay status under a written election that provides a specific schedule for distribution of the entire interest; and
- The distribution is actually being made under the written election.

Also, distributions from annuity contracts are not subject to the additional tax on early distributions to the extent that the distributions are allocable to an investment in the contract before August 14, 1982.

Distributions that are dividends paid with respect to stock described in IRC Section 404(k) are not subject to the additional tax.

If any of these exceptions applies, enter the distribution amount on line 2 and exception number 8 in the box provided. For additional exceptions applicable to annuity contracts, see IRC Section 72(q)(2) and IRS Publication 575.

Also enter on line 2 the amount of a distribution you received when you were age 59½ or older, if you received federal Form 1099-R for a distribution that incorrectly indicated an early distribution (code 1).

Line 3 – Subtract the amount of distributions excepted from tax on line 2 from the amount of early distributions included on line 1. Enter the result on line 3. This is the amount of your distribution subject to tax.

Line 4 – Multiply line 3 by 2½%. However, if any amount on line 3 was a distribution from a SIMPLE retirement plan, you must multiply that amount by 6% instead of 2½%. SIMPLE distributions are included in boxes 1 and 2a of federal Form 1099-R and are designated with a code "S" in box 7.

Enter the total on line 4 and on Form 540, line 36, or Form 540NR, line 45. If you are not required to file Form 540 or Form 540NR, send your completed form FTB 3805P and your check or money order for the full amount you entered on line 4 to the Franchise Tax Board. Make your check payable to the "Franchise Tax Board." Be sure to write your social security number and "1997 FTB 3805P" on your check or money order.

Mail to: FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0001